



**Attorney General  
Betty D. Montgomery**

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*Via Overnight Mail*

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: *In the Matter of Federal State Joint  
Board on Universal Service, C C  
Docket No. 96-45.*

Dear Mr. Caton:

Enclosed please find the original and five copies of the Comments of the Public Utilities Commission of Ohio in the above-referenced matter. Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope.

Thank you for your assistance in this matter.

Respectfully submitted,

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )  
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Federal-State Joint Board on ) CC Docket 96-45  
Universal Service )  
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INITIAL COMMENTS OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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INTRODUCTION

On February 8, 1996, the President signed into law the Telecommunications Act of 1996 (1996 Act). Section 254(a)(1) of the 1996 Act requires that within one month after the date of the enactment of the 1996 Act the Federal Communications Commission (FCC) shall institute a Federal-State Joint Board on Universal Service. The Federal-State Joint Board consists of three commissioners of the Federal Communications Commission (FCC), four state commissioners, and a state-appointed utility consumer advocate nominated by a national organization of state utility consumer advocates.

Consistent with the Congressional directives set forth by the 1996 Act, on November 7, 1996, the Joint Board issued its Recommended Decision to the FCC regarding universal service. The Joint Board's Recommended Decision, among other things, addresses issues related to universal service principles; services eligible for support; support for schools, interstate low-income programs and high cost areas; common line cost recovery; and administration of support mechanisms.

The Public Utilities Commission of Ohio (PUCO) hereby submits its initial comments pursuant to the FCC's November 18, 1996 Public Notice requesting

comments on the Federal-State Joint Board's Recommended Decision. Initial comments are due on or before December 19, 1996.

## **BACKGROUND**

Section 254(b)(1) of the 1996 Act requires that the Joint Board on Universal Service and the FCC shall base their policies concerning the preservation of universal service on the following principles:

- (1) Quality services should be available at just, reasonable, and affordable rates.
- (2) Access to advanced telecommunications and information services should be provided in all regions of the country.
- (3) Consumers in all regions of the nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.
- (4) All providers of telecommunication services should make equitable and nondiscriminatory contributions to the preservation and advancement of universal service.
- (5) There should be specific and predictable federal and state support mechanisms to preserve and advance universal service.
- (6) Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunication services.
- (7) The Joint Board and the FCC are permitted to determine if other principles are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with the 1996 Act.

The FCC's decision in this proceeding should be carefully crafted to fulfill each of these obligations.

## **DISCUSSION**

### **Definition Of Universal Service: What Services To Support (Section IV of the Recommended Decision).**

In its Recommended Decision, the Joint Board concluded that all four criteria set forth in the Act, Section 254(c)(1)(A)-(D) need to be considered before determining whether a service or functionality should be included in the definition of universal service; however, a particular service need not meet each of the four criteria to be included in the definition. Recommended Decision at Paragraph 46. Section 254(c)(1)(A)-(D) requires the Joint Board and the FCC to consider the extent to which telecommunications services included in the definition of universal service are: (1) essential to education, public health or public safety; (2) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (3) being deployed in public telecommunications networks by telecommunications carriers; and (4) consistent with the public interest, convenience, and necessity.

The PUCO agrees with the Joint Board's recommendation that services included in the definition of universal service do not necessarily have to meet all four criteria. The PUCO does believe that each of the services designated by the Joint Board does meet at least three, if not all four, criteria.

The Joint Board recommended that the following services be included in the definition of universal service:

- (1) Single-party service;
- (2) Voice-grade access to the public switched telephone network, including the ability to place calls and to receive calls, as well as a local usage component;
- (3) Dual Tone Multi-Frequency (DTMF or touch-tone) or its functional digital equivalent;

- (4) Access to 911 and other emergency services, including access to E911 when a local community requests that a carrier provide such access;
- (5) Access to operator service;
- (6) Access to interexchange service; and
- (7) Access to directory assistance.

Recommended Decision at Paragraphs 46-52.

The Joint Board acknowledged that access to Telephone Relay Service (TRS) is an integral part of universal service. Since, however, this service is already supported through a separate fund, the Joint Board determined that access to TRS need not be listed as part of universal service support. The Joint Board also noted that the provision of "white page listings" received significant support from commenters. Though the Joint Board agreed that this is an important service that facilitates access to the network, they did not believe that white pages listings to be within the Act's definition of telecommunication services. In its discussion, the Joint Board noted that it rejected the suggestions from several commenters that the actual use of internet services be supported. The Joint Board found that non-toll access to the Internet is provided through voice-grade access to the public switched network. The Joint Board also found that the provision of Internet service does not meet the statutory definition of a "telecommunications service". The Joint Board declined to support toll access to Internet providers, but predicted that the increasing demand for such service will result in broader accessibility of Internet access providers and reduce or eliminate the need for customer in rural areas to place toll calls to obtain Internet service. Recommended Decision at Paragraphs 65-69.

The PUCO generally agrees with the Joint Board's list of recommended services and functionalities to be included in the definition of universal service. The

equivalent of these same services was also included in the PUCO's definition of universal service within its local telephone competition guidelines. (PUCO Case No. 95-845-TP-COI Section XIII, attached as Appendix A). However, the PUCO, in its definition of universal service, limited single-party service to residential service only. The PUCO also included a white pages listing plus a directory in its definition. The PUCO believes that access to directory assistance without the inclusion of a directory does not completely meet consumers' basic needs for access to information. Use of directory assistance may become costly, especially if a caller is charged a fee for each directory assistance call placed. The availability of a directory could alleviate the need to place the majority of directory assistance calls and consequently lower costs for the consumer.

The PUCO does agree with the Joint Board's recommendations that the actual use of internet services not be supported. However, in its local telephone competition guidelines, the PUCO acknowledged the need for the network to be able to support such services by requiring companies to have the capability of transferring data at a rate of 9600 bps by June 12, 1997. The PUCO believes that the usage of the public switched network for transmission of data will increase over time; therefore, the PUCO determined that all LECs should phase in the necessary network upgrades to allow data transmission at speeds of 14,400 bps by December 31, 1998. The policy of Ohio promotes the usage of technology such as computers to enhance our long term societal goals. The PUCO has determined that a certain minimal data transfer rate recognized in bits per second should become part of telephone service which is universally available to all Ohioans.

In its Recommended Decision, the Joint Board refrained from recommending that the Commission require eligible carriers to meet specific technical standards established by the Commission as a condition to receiving universal service support.

Instead the Joint Board recommended that state commissions submit to the Commission the service quality data provided to them by carriers. Recommended Decision at Paragraphs 104-105.

The PUCO agrees with this recommended decision. The PUCO believes that the states are in a better position to determine the standards for quality needed for their particular circumstances and to enforce such rules. The PUCO currently has minimum telephone service standards and has just opened a new docket to review these standards in the light of competition. The PUCO has no problem with providing the Commission the service quality data provided by the carriers operating within Ohio. The FCC should, however, determine the type of data it would expect the state commissions to provide.

The Joint Board also recommended that the Commission revisit the definition of universal service no later than January 1, 2001. It also recommended that the Commission could institute a review at any time upon its own motion or in response to petitions by interested parties. Recommended Decision at Paragraph 110.

The PUCO concurs that the definition of universal service needs to be revisited periodically. The changing technology expected as a result of the competitive marketplace alone dictates a need to review the definition and to update it if need be. Societal needs may also change, thus causing the need for the universal service definition to reflect these changes. The PUCO has also indicated the need to review and possibly update Ohio's universal service definition and support fund periodically in its local telephone competition guidelines.

## **Selection Of A Proxy Cost Model for High Cost Consumers**

### **(Section VII of the Recommended Decision)**

The PUCO agrees with the Joint Board's recommendation that the calculation of costs should be based on forward-looking economic costs. The PUCO further agrees that proxy models are the most efficient method for determining such forward-looking costs. The PUCO disagrees, however, with the Joint Board's lack of recommendation on a specific model. Given the short time frame for development and adoption of the proxy model, the PUCO recommends a preliminary proxy model selection be made at this time. As our local competition guidelines show, the PUCO has already selected the Benchmark Cost Model (BCM) and any subsequent revisions to that model for calculation of the benchmark costs for determining high cost support. The Ohio Commission believes that, although not perfect, this model is the best alternative currently available. Of the models considered by the Joint Board, the BCM2 model best meets the criteria for evaluating the reasonableness of a proxy cost model. Recommended Decision at Paragraph 277. The PUCO believes that the Joint Board's efforts would be best spent in further refining this particular model to meet all the criteria rather than continue debating the relative merits of the various models or creating a new model. Attached to these comments, for the FCC's review and consideration, is the PUCO's intrastate Universal Service Funding model, which has been recently adopted by the Ohio Commission in Case No. 95-845-TP-COI. (Appendix A).

## **Services to be Supported for Low-Income Consumers**

### **(Section VIII of the Recommended Decision)**

In its Recommended Decision, the Joint Board determined that, through universal service support mechanisms, low-income consumers should have access to



the same services designated for support for rural, insular, and high cost areas. The Joint Board also proposed that the Lifeline Assistance Program for eligible low-income consumers include voluntary toll limitation. Recommended Decision at Paragraphs 383 - 384.

In addition, the Joint Board recommended that only carriers that currently possess the capability of providing toll limitation services be required to provide them to Lifeline-eligible consumers and receive universal service support for such services. Eligible carriers that are technically incapable of providing any toll limitation services should not be required to provide either "toll blocking" or "toll control." Toll Blocking allows customers to block toll calls and toll control allows customers to specify in advance a certain amount of toll usage per month or billing cycle. These carriers' incapability of providing such services should not affect their designation as eligible telecommunications carriers to receive universal service support. The Joint Board, however, further recommended that eligible carriers not currently capable of providing these services be required to add the capability to provide at least toll blocking in any switch upgrades (although universal service support will not be provided for these switch upgrades). Carriers offering voluntary toll limitation services should receive support based on the incremental cost of providing these services. The Joint Board also noted that toll limitation services should be supported only for low-income consumers. Recommended Decision at Paragraphs 385-386.

The PUCO agrees with the Joint Board's recommendations that toll limitation services be provided. The PUCO also concurs that only such services for low-income customers be supported. In Ohio's local competition guidelines, which contains the PUCO's universal service funding guidelines (Attached as Appendix A), the PUCO established a low-income support program. This program includes discounted rates

to low-income customers for call control features, i.e., toll restriction and blocking for 900 and 976 calls.

The Joint Board further recommended that carriers receiving universal service support for providing Lifeline service be prohibited from disconnecting the service of Lifeline subscribers for nonpayment of toll charges. Recommended Decision at Paragraph 387. The PUCO concurs with the Joint Board's recommendation that Lifeline subscribers not have service disconnected for failure to pay toll charges. In fact, the PUCO has taken this position a step further. In October 1996, the PUCO issued its disconnection order which prohibits the disconnection of *any* customer's local service for failure to pay toll charges. PUCO Case No. 95-790-TP-COI (Attached as Appendix B). The nonpayment of toll charges will result only in the disconnection of toll service. The PUCO believes that the disallowance of disconnection of local service for non-payment of toll contributes to a "level playing field" in the competitive market.

Also in its disconnection docket, the PUCO has ultimately required local service providers to provide "selective" toll blocking service to all other toll service providers. No local service provider will be permitted to "universally" block access to all toll service for the nonpayment of toll charges owed to any particular toll service provider or group of toll service providers, including both intraLATA and interLATA toll providers. However, this provision will not be in effect until 1 + intraLATA equal access is available throughout Ohio. IntraLATA equal access is scheduled to be available in Ohio from all ILECs not legally constrained from offering interLATA services no later than November, 1997. Until then, companies shall offer "universal" toll blocking.

## **Reevaluation of Existing Low-Income Support Programs**

The PUCO commends the Joint Board on its proposals to modify existing federal Lifeline and Link Up programs in order to extend the program benefits to low-income residential end users "in all regions of the nation." Before responding to specific Joint Board recommendations, however, the Ohio Commission submits the following background information regarding Ohio's existing low-income support programs.

Currently, there are three programs in Ohio offering various forms of financial assistance to residential, low-income end users. Service Connection Assistance (SCA) is available to help qualified individuals defray the upfront deposit and connection charges associated with acquiring telephone service. Telephone Service Assistance (TSA) waives the upfront charges and offers recurring monthly discounts to low-income customers who are also either elderly or disabled. Finally, Universal Service Assistance (USA) is a program offered by Ameritech Ohio as part of its Advantage Ohio alternative regulation plan. PUCO Case No. 93-487-TP-ALT. USA is effectively a combination of both the SCA and TSA programs, with the addition of free toll blocking and somewhat broader eligibility criteria.

Each of these programs have been certified by the FCC to receive partial funding through the federal Lifeline and/or Link Up programs. In every case, however, at least half of the program costs are supported by individual carrier or state fund contributions. Additionally, all three programs employ means-tested eligibility criteria for qualification purposes. Finally, it should be noted that, as previously mentioned, the PUCO's recently released rules governing Ohio local competition has required the establishment of a single, statewide low-income support program which, not unlike Ameritech's USA program, will include a larger eligible customer base

and a greater level of benefits than is currently offered through SCA and TSA combined.

The Joint Board, in its efforts to ensure ubiquitous availability of federal low-income support, has recommended various modifications to both the existing Lifeline and Link Up programs.

#### **Lifeline Program for Low-Income Consumers**

In its Recommended Decision, the Joint Board proposed, among other things, that in order to receive any funding from the new federal universal service support mechanism, a carrier must offer Lifeline assistance to eligible low-income customers. Recommended Decision at Paragraph 417. Furthermore, the Joint Board proposed that Lifeline funding no longer be tied to state matching contributions, in order to make such federal funds available even in states that do not provide matching funds. Instead, the Joint Board recommended a baseline federal level of funding (tentatively set at \$5.25 per month), beyond which additional federal funding may be received at a rate of \$1.00 for every \$2.00 contributed from the intrastate jurisdiction, up to a maximum of \$7.00 of federal support. Recommended Decision at Paragraphs 417-419. Additionally, the Joint Board proposed to amend the current Lifeline program such that all telecommunications carriers, not just local exchange carriers (LECs), are eligible to receive support for serving qualified low-income consumers. Recommended Decision at Paragraph 424.

#### **Link Up Program for Low-Income Consumers**

With respect to the current Link Up program, the Joint Board recommended, among other things, that such support be available to qualifying low-income consumers requesting service from any telecommunications carrier that provides local exchange service. Recommended Decision at Paragraph 427. The Joint Board further recommended, however, that the level of Link Up support for each

individual consumer be maintained at its current level. Recommended Decision at Paragraph 427.

The PUCO does not oppose the Joint Board Lifeline and Link Up proposals identified above, and further agrees that such recommendations will help achieve the universal service objectives of the Telecommunications Act of 1996. There are, however, two additional Joint Board recommendations about which the Ohio Commission does have concerns.

In its Recommended Decision, the Joint Board also proposed that the Commission implement a national rule prohibiting telecommunications carriers from requiring Lifeline-participating subscribers to pay service deposits in order to initiate service if the subscriber voluntarily elects to receive toll blocking. Recommended Decision at Paragraph 429.

The PUCO acknowledges the Joint Board's concerns regarding high service deposits as discussed in Paragraph 429. However, the PUCO disagrees with the Joint Board's recommendation that deposits be waived if subscribers voluntarily elect to receive toll blocking. The waiver of a deposit should not depend on whether or not a subscriber chooses toll blocking. The requirement of the blocking of toll services has never been tied with the Lifeline or Link-Up assistance programs before. This recommendation unfairly assumes that all low-income subscribers are unable to manage their toll bills.

The PUCO does agree that the requirement of deposits (often high, due to previous disconnection of service) is a barrier to low-income customers accessing the telecommunications network. Within Ohio's newly proposed low-income support program, the PUCO ordered a waiver of deposits required to obtain new service for subscribers who will be participating in the low-income program. The PUCO encourages the Commission to waive service deposits to obtain new service for all

Lifeline-participating subscribers and not to link such a requirement to the voluntary choice of toll blocking.

Finally, the Joint Board recommended that both the Lifeline and Link Up programs be modified such that they are no longer funded solely through interexchange carrier (IXC) revenues. Instead, the Joint Board proposed that the programs be supported through "equitable and non-discriminatory" contributions from all telecommunications carriers that provide interstate services. The Joint Board further proposed that such contributions be made on the basis of each carrier's revenues. Recommended Decision at Paragraphs 423 and 426.

To the extent that the above recommendation is adopted, the PUCO urges the FCC to draw such contributions from only the interstate revenues of carriers that provide interstate services. As mentioned previously in these comments, Ohio currently funds over half of the costs of its existing low-income programs. Furthermore, the PUCO has established the development of an intrastate universal service fund that is expected to subsidize a similar share of the new low-income support program delineated in the Ohio Commission's recently release local competition rules (see attached Appendix A). To that end, as discuss later in these comments in more detail, the Ohio Commission questions whether the FCC even has the requisite authority to draw from intrastate revenues in order to fund the federal programs. However, if the FCC does mandate the use of intrastate revenues to contribute to the funding of the federal low-income programs, then the PUCO submits that the interstate revenues of the same carriers should also be made available to help defray states' program costs of providing financial support to low-income consumers.

## **Support For Schools And Libraries**

### **(Section X of the Recommended Decision)**

The PUCO commends the Joint Board for its insightful recommendations to the FCC regarding mechanisms and opportunities for schools and libraries participation in the universal service support system directed by Congress in the 1996 Act.

### **Ohio Educational Technology Initiatives**

Before commenting on specific recommendations by the Joint Board regarding schools and libraries, the PUCO considers it important that the Commission be apprised of educational technology initiatives taking place in the state of Ohio. Ohio has taken a leadership position by establishing and funding several major programs designed to ensure that Ohio's schools have access to the advanced telecommunications services proposed by the 1996 Act.

### **Ohio SchoolNet**

Ohio SchoolNet is a \$95 million initiative to bring the capacity for telecommunications and computer technology into every public K-12 classroom in Ohio. The Ohio Legislature authorized \$50 million to wire each of the 100,000 classrooms in the state for data, voice, and video transmission, and an additional \$45 million for the provision of a computer workstation in each classroom of schools in those 25 percent of the districts in the state determined to have the lowest property valuation. This initiative, which became law in 1994, is to be fully implemented by 1999 and will allow the installation and use of the internet and other networking technology throughout Ohio's public schools. The wiring infrastructure provided by Ohio SchoolNet will advance access to the global information highway for all

students and teachers and will encourage new ways of thinking, learning and doing in our schools and classrooms.

### **SchoolNet Plus**

In 1995, the Ohio legislature passed additional legislation to provide technology to enhance educational opportunities for our public school children. Complementary to the SchoolNet initiative, SchoolNet Plus is an expenditure of \$400 million to provide at least one multi-media computer workstation for every five Ohio public school students in grades K-4. These funds are targeted to allow schools to procure computer hardware, software, equipment, training, and services as well as equipment used for two-way audio and video applications. Through Ohio SchoolNet and SchoolNet Plus, every Ohio public K-4 classroom will have state-of-the-art telecommunications technology to accommodate the diverse needs and learning styles of Ohio's students.

### **Ohio SchoolNet Telecommunity**

The Ohio SchoolNet Telecommunity is a \$26 million initiative authorized by the PUCO and funded by nine major local exchange telephone companies whose combined service area covers 97 percent of Ohio. The goal of this program is to provide grants which would allow the deployment of two-way fully interactive distance learning capabilities among Ohio's schools. Working in conjunction with Ohio SchoolNet and SchoolNet Plus, the Ohio SchoolNet Telecommunity offers schools the opportunity to connect and collaborate with businesses, institutes of higher education, and community resources. The purpose of the Ohio SchoolNet Telecommunity is to afford students and teachers the chance to learn, experiment, and broaden their range of experiences through video resources. Other goals of the Ohio SchoolNet Telecommunity include: connect schools to libraries, universities,



museums, laboratories and other community resources around the state, country and world through 21st-century technology; build capacity among teachers and students to utilize technology in the classroom as a tool to increase meaningful learning and individualized educational opportunities; create virtual communities through which students, teachers, and community members are able to communicate and collaborate with individuals from different geographic regions, states, even countries.

#### **State of Ohio Multiagency Communications System (SOMACS)**

The Ohio Department of Administrative Services awarded a fiber optic infrastructure development contract in February, 1996. The State of Ohio Multiagency Communications System (SOMACS) will operationalize the coordinated use of low-cost commercial telecommunications services for all state agencies. SOMACS provides the opportunity for schools and other state institutions to access and use high speed fiber connections of up to 2 gigabits per second over the fiber backbone. In addition, the state has established universal postalized pricing for 56 Kbps and 1.5 Mbps circuits. Postalized pricing allows for T-1 level point to point connection between any two schools within Ohio at a standardized price. The standardized price is at a significant discount from previously-available pricing for the same services.

The PUCO asks the Joint Board and the FCC, in recognition of Ohio's forward-looking approach and efforts in the provision of advanced telecommunications technologies to schools in Ohio, to ensure that universal service support for schools and libraries is flexible and fair such that Ohio schools can build upon and enhance technologies already in place with support for recurring costs and technological options which would fill in the gaps and seams in our system.

### **Functionalities/Services Eligible for Support**

The Joint Board recommends that support for schools and libraries include all telecommunications services, internet access and internal connections. Recommended Decision at Paragraph 9. More specifically, the Joint Board recommends that the Commission adopt a rule that provides schools and libraries with maximum flexibility to purchase whatever package of telecommunications services they believe will meet their needs most effectively and efficiently. Recommended Decision at Paragraph 458.

The PUCO concurs with the Joint Board recommendation that support for schools and libraries include all telecommunications services, internet access and internal connections. In light of the telecommunications technology initiatives already in place in Ohio, the PUCO appreciates the Joint Board intent to provide maximum flexibility in the schools' selection of telecommunications services. In addition, the PUCO supports the Joint Board recommendation that internal connections include such items as routers, hubs, network servers, and wireless LANs. Recommended Decision at Paragraph 477. This breadth of choice will provide Ohio schools support for the completion and network integration of the wiring infrastructure already installed under the Ohio SchoolNet program.

The Joint Board acknowledges that many schools have already secured internal connections and concludes that the provision of such connections is both technically feasible and economically reasonable. Recommended Decision at Paragraph 477. The PUCO notes that the Ohio legislature committed \$50 million for the provision of internal wiring for school classrooms.

## **Discount Methodology**

The Joint Board recommends that the Commission adopt a percentage discount mechanism, adjusted for schools and libraries that are defined as economically disadvantaged and those schools and libraries in high cost areas. The Joint Board goes on to recommend that the Commission adopt a matrix that provides discounts from 20 percent to 90 percent for telecommunications services, internet access and internal connections, with the range of discounts correlated to indicators of economic disadvantage and high cost for schools and libraries. Recommended Decision at Paragraph 547.

The PUCO concurs with the discount methodology proposed by the Joint Board and considers it flexible and accommodating to the telecommunications technology programs in place in the state. In particular the discount methodology will provide schools and libraries in Ohio support for long-term recurring costs for what are now relatively high-cost advanced telecommunications services related to internet access and network two-way video applications. The discount system for low-wealth and high cost schools will enhance the ability for all schools in the state to have more equal opportunity to access advanced technologies.

The PUCO agrees that the national school lunch program is appropriate criterion for identifying low-income districts typically in urban areas, but notes that it may not be as appropriate for identifying low-wealth/high cost districts which are more likely to be rural. A combination of property valuation for low-wealth district determination, and geographic distance from switch or wire center for high cost determination may be more appropriate for the more rural school districts. (See comments of the Ohio Department of Education, Office of Information, Learning and Technology Services - SchoolNet, for an elaboration of the determination of low wealth and high cost schools.)

## **Funding for Schools and Libraries**

The Joint Board recommends that universal support mechanisms for schools and libraries be funded by assessing both the interstate and intrastate revenues of providers of interstate telecommunications services. Recommended Decision at Paragraph 817. In addition, the Joint Board recommends that the FCC set an annual cap on spending of \$2.25 billion per year. Recommended Decision at Paragraph 556.

The PUCO agrees that universal support mechanism for schools and libraries be funded by assessing both intrastate and interstate revenues of providers of interstate telecommunications services.

However, the PUCO is interested in the methodology for managing especially the intrastate portion of the fund. The PUCO recommends that the FCC give thought to a mechanism that provides for some state responsibility and/or oversight for the collection and distribution of the intrastate revenues to be assessed for support mechanisms for schools and libraries.

In particular, the PUCO suggests that the intrastate revenues targeted for the education and library support fund be collected and administered by state authorities. This policy would allow the states to maximize their expertise and local knowledge of school and library needs within each state and provide a relatively know quantity of funds to support the attainment of advanced telecommunications technologies. The interstate portion of the schools and libraries fund would be used to enhance and augment intrastate funds available to each state as needed.

The PUCO recommends that the interstate portion of the schools and libraries fund be apportioned in the form of block grants to each state. A block grant approach has the benefit of being predictable, one of the underlying principles of Section 254. The formula for determining block grants to the states should consist of a baseline

relative to the proportion of revenues contributed by each state, modified by a measure of low-wealth determination. The PUCO suggests that low-wealth determination for schools in each state be based on criteria established by state education agencies in conjunction with the FCC.

## **ADMINISTRATION**

### **Funding Base**

#### **(Section XIII of the Recommended Decision)**

The Joint Board recommended that universal service support mechanisms for schools, libraries, and rural health care providers be funded by assessing both the intrastate and interstate revenues of providers of interstate telecommunications services. Recommended Decision at Paragraph 817. The Joint Board makes no recommendation concerning the appropriate funding base for the modified high cost and low-income assistance programs, but requests that the Commission seek additional information and parties' comment, particularly the states, regarding the assessment method for these programs. Recommended Decision at Paragraph 817. The PUCO generally questions the FCC's legal authority to utilize revenues associated with intrastate services in funding the federal universal service programs. But the PUCO accepts the Joint Board's proposal regarding the dual funding of schools and libraries and rural health care providers, subject to some suggestions outlined in these comments. Regarding the dual funding of high cost and low-income, the PUCO offers constructive suggestions while reserving the right to challenge the decision if the FCC funds those programs with intrastate revenues.

It is not difficult to understand why some members of the Joint Board and the FCC appear to endorse dual federal/state funding of high cost and low-income universal service programs. There are laudable public policy goals that support a

national, uniform program for universal service where low cost states like Ohio effectively fund other higher cost states relative to universal service. As a practical matter, enlisting intrastate revenues will substantially expand the funding base available for the FCC's universal service mechanism.

The PUCO's substantive comments reflect Ohio's suggestions relative to the Joint Board's existing recommendations. Perhaps even more significant, however, are Ohio's concerns regarding the unanswered questions regarding the total size of the fund and operation of the unspecified proxy model and benchmark rate to be chosen. The PUCO finds it difficult to endorse any funding mechanism given these unknowns. Rather than buy a "pig in a poke," the PUCO will offer some constructive suggestions now and will articulate and reserve its legal concerns with a funding base that includes intrastate revenue. Whatever the FCC's approach is relative to funding, it needs to ensure that state authority over universal service is meaningfully preserved, as was expressly desired by Section 254(f) of the 1996 Act and was affirmatively stated in Congress' Joint Explanatory Statement. Joint Explanatory Statement at 132.

An examination of the 1996 Act shows that the FCC does not have clear authority to utilize intrastate revenue to fund its universal service program. First and foremost, Section 254 was crafted to reinforce the traditional dichotomy between interstate and intrastate services that is found throughout the 1996 Act. Section 254 unequivocally provides that interstate service providers shall contribute to the universal service mechanism established by the FCC, and that intrastate service providers shall contribute to the universal service mechanisms established by the states. 47 U.S.C. Section 254(d), (f).

This requirement alone strongly implies that the revenues available to fund the FCC's universal service mechanism are limited to those revenues associated with

interstate services. Courts have concluded in this context that jurisdiction over revenue associated with a service is limited by jurisdiction over the underlying service. *AT&T Communications of the Mountain States, Inc. v. Pub. Serv. Comm.*, 625 F. Supp. 1204 (D. Wyo. 1985) (and cases cited therein). The *AT&T* Court's straightforward approach certainly makes sense and prevents one jurisdiction from indirectly infringing upon the other party's jurisdiction.

Without explicit authority or Congressional directive, it is inconsistent with the entire history of the Communications Act's jurisdictional separation to suggest that the FCC can simply appropriate intrastate revenue for the purpose of establishing federal rates or charges as long as it limits those charges to interstate carriers who also provide intrastate services. Section 152(b) of the Communications Act prevents that result. Except as to certain specified provisions, Section 152(b) provides that "nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service." Hence, except for certain specified sections (not including Section 254), the extent of the FCC's jurisdiction is limited to interstate services.

It defies reality to suggest that regulation of revenues associated with intrastate service is anything other than indirect regulation of intrastate service rates. It is axiomatic that the current intrastate rates have been set by states without regard to this new federal proposal on universal service (i.e., based on cost or alternative pricing authority). Accordingly, the federal appropriation of some of the revenues generated by those state-approved rates directly and substantially impacts the intrastate rate authority of states. All else being equal, there is a direct, upward pressure on intrastate rates if intrastate revenues are drawn upon by the FCC's universal service mechanism. Stated another way, the states' jurisdiction over

intrastate rates, as expressly preserved by Sections 152(b), will be directly impacted by the "loss" of those intrastate revenues.

The enlistment of intrastate revenues, at a minimum, amounts to regulation "in connection with intrastate services" by the FCC, which is also prohibited by Section 152(b). It is simply not legally sufficient for the FCC to rely upon broad policy arguments to conclude that it has the authority to preempt states in this area. *Louisiana Pub. Serv. Comm. v. FCC*, 476 US. 355, 374-375 (1986) (the FCC cannot take preemptive action to advance broad federal policy where the effect is to disregard 47 U.S.C. Section 152(b)'s express jurisdictional limitation). To the same end, Section 601(c) of the 1996 Act prohibits implicit preemption of state authority where Congress failed to explicitly preempt the states.

Congress also provided directly within Section 254 (K) that "[t]he Commission with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary *cost allocation rules*, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services." Here, Congress is clarifying that jurisdiction over certain services includes jurisdiction over the underlying cost and rate/revenue issues related to these services. Congress contemplated in this provision that costs may need to be allocated among services and, in that context, explicitly confirmed that the FCC should only address interstate services (and the costs and rate/revenue issues attached to those services) so that states can address intrastate services (and the costs and rate/revenue issues attached to those services). Congress consciously constructed the 1996 Act, including Section 254, to continue the dual regulatory system of the FCC regulating interstate services (including cost and rate/revenue issues) and the states regulating intrastate services (including cost and rate/revenue issues).



As a related matter, the Joint Board requests that parties comment on the ability to separately identify intrastate and interstate revenues in the evolving telecommunications market where services typically associated with particular jurisdictions are likely to be packaged together. Recommended Decision at Paragraph 822. Although that task may become more difficult, experience and reality show that it is not impossible and, in fact, will probably continue to be done independent of this universal service issue.

First, if a judicial interpretation of Section 254 shows confirms that Congress' intent was to require such separation or allocation of revenue, then that task will need to be performed even in an evolving telecommunications market. Second, it is unlikely that the FCC's Universal Service mechanism will provide for 100% recovery of the revenue shortfall between the benchmark and the proxy results. Currently, the CCLC and the End-User Common Line Charge (or subscriber line charge) are designed to recover a 25% allocation of the local loop costs to the interstate jurisdiction. Therefore, even if service packages are marketed that do not separate interstate or intrastate rates, a general allocator could still be used for jurisdictional purposes in the context of universal service. It currently is, and can continue to be, done in that simple, efficient manner. Third, jurisdictional revenue separation will occur independent of whether the FCC's universal service mechanism requires it. The Americans with Disabilities Act required revenue separation for assessment of funds for the Telecommunications Relay Service (TRS). 47 U.S.C. Section 225(d)(3)(B).<sup>1</sup> In

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<sup>1</sup> In requiring cost separation for TRS, Congress used the abbreviated phrase "state jurisdiction" to compare the state recovery of intrastate costs from intrastate service customers to the FCC-mandated recovery of "costs caused by interstate telecommunications relay services from all subscribers for every interstate service." 47 U.S.C. Section 225(d)(3)(B). This is another indication that Congress generally believes that jurisdiction over the underlying services extends only to the rates and revenues associated directly with those services.